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10/085,145	02/27/2002	Colin J. Meiser	BOC9-2001-0041 (286)	1254
40987	7590	09/28/2007	EXAMINER	
AKERMAN SENTERFITT			NGUYEN, TAN D	
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WEST PALM BEACH, FL 33402-3188			3629	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/085,145	<b>Applicant(s)</b> MEISER ET AL.	
	<b>Examiner</b> Tan Dean D. Nguyen	<b>Art Unit</b> 3629	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,7,8,10-18,20,21 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,8,10-18,20,21 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/21/07 has been entered.

### ***Response to Amendment***

The amendment of 8/21/07 has been entered.

### ***Claim Status***

Claims 1-5, 7-8, 10 (method), 11-13 (system), and 14-18, 20-21 and 23 (computer-readable storage) are pending and rejected as below. Claims 6, 9, 19 and 22 have been canceled.

### ***Claim Rejections - 35 USC § 112***

2. Claims 1-5, 7-8, 10, 14-18, 20-21 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As of 7/30/07, claim 1 is as followed:

1. (Currently Amended) A method of eliciting a response comprising:
  - (a) identifying the available network capacity for transmitting electronic content for an electronic campaign and receiving consumer responses to said transmitted electronic content;
  - (b) transmitting electronic content over the network according to a predetermined outbound transmission flow rate for said electronic campaign;
  - c) concurrently determining the effectiveness of the electronic campaign by analyzing consumer responses to said transmitted electronic content, wherein said transmitted electronic content is transmitted over a plurality of delivery channels:
  - (d) further analyzing received consumer responses associated with each of said plurality of delivery channels used to transmit the electronic content and, based upon the received consumer responses analyzed, determining which of said plurality of delivery channels is more effective than each of the other of said plurality of delivery channels:
  - (e) selectively redirecting at least a portion of the electronic content from other of said plurality of delivery channels to the delivery channel determined to be more effective; and
  - (f) dynamically modifying said outbound transmission flow rate for said electronic campaign according to said determined effectiveness of the electronic campaign and said identified available network capacity.

Note: for convenience, letters (a)-(f) are added to the beginning of each step.

1) In claim 1, step (c) is vague because it's not clear the relationship between the "network" of step (a) to the "a plurality of delivery channels" of step (c) over which the "electronic content is transmitted"? Is the network the same as the delivery channels?

2) It's not clear the relationship of steps (e) and (f)? Is there any relationship between the "delivery channel" and "modifying the outbound transmission flow rate" to obtain effective campaign or channel?

3) Similarly, claim 14, which has similar limitation as in claim 1, is rejected for the same reason set forth in the rejection of claim 1 above.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**6. Claims 1-5, 7-8, 10 (method), 11-13 (system<sup>1</sup>), 14-18, 20-21 and 23 (product) are rejected under 35 U.S.C. 103(a) as being unpatentable over (1) D'EON et al in view of (2) applicant admitted prior art (AAPA) or RAKOSHITZ et al and (3) SCHLACK.**

As of 7/30/07, claim 1 is as followed:

1. (Currently Amended) A method of eliciting a response comprising:

(a) identifying the available network capacity for transmitting electronic content for an electronic campaign and receiving consumer responses to said transmitted electronic content;

(b) transmitting electronic content over the network according to a predetermined outbound transmission flow rate for said electronic campaign;

c) concurrently determining the effectiveness of the electronic campaign by analyzing consumer responses to said transmitted electronic content, wherein said transmitted electronic content is transmitted over a plurality of delivery channels:

(d) further analyzing received consumer responses associated with each of said plurality of delivery channels used to transmit the electronic content and, based upon the received consumer responses analyzed, determining which of said plurality of delivery channels is more effective than each of the other of said plurality of delivery channels:

(e) selectively redirecting at least a portion of the electronic content from other of said plurality of delivery channels to the delivery channel determined to be more effective; and

(f) dynamically modifying said outbound transmission flow rate for said electronic campaign according to said determined effectiveness of the electronic campaign and said identified available network capacity.

**Similarly, D'EON et al** discloses a method of assessing effectiveness of an Internet marketing (advertising) campaign (including eliciting a response) comprising the steps of:

(a) identifying the available network capacity for transmitting electronic content for an electronic campaign and receiving consumer responses to said transmitted electronic content; {inherently included in the teachings of Fig. 1, 10}

(b) transmitting the electronic content {see col. 1, "*web page .... banner advertisement*" } over the network according to a predetermined campaign;

(c.) concurrently determining the effectiveness of the campaign by identifying consumer responses to the transmitted electronic content (information) {see col. 2, lines

29-32, col. 3, lines 10-16, col. 7, lines 10-14 "*indication ... effectiveness of the advertisement*", Fig. 2, Fig. 6); and

(f) dynamically modifying the campaign parameters for said electronic campaign according to said determined effectiveness of the electronic according to said determined effectiveness of the electronic campaign and said identified available network capacity. {see col. 1, lines 50-55, and Fig. 6}).

Note that on col. 1, lines 25-31, D'EON et al teaches that Internet advertising expands space and more resources are spent on advertising and it's desirable to assess the effectiveness of Internet advertising, to more efficiently allocate Internet advertising resources. On col. 1, lines 50-55, D'EON et al teaches the step of "*ascertaining which banners are and are not effective in causing a user to make a transactional decision*", therefore, it would have been obvious to improve (modify) the campaign effectiveness by deleting the not effective banners and use only the effective banner in order to be profitable, i.e. increasing AD #1 while decreasing or deleting AD #2, as shown in Fig. 6.

As for the limitation of "according to a predetermined outbound transmission flow rate for said electronic campaign" in step (b), this is inherently included in Fig. 6, see Output, element 58, "AD #: 1, 2, 3", "# IMPRESSIONS: 3, 3, 1".

D'EON et al fairly teaches the claimed invention except for: (1) explicitly disclosing that the campaign parameter in step (d) is an "outbound transmission flow rate", which is one of the many e-marketing campaign parameters, (2) new amended steps (d)-(e) above.



**AAPA**, as shown on pages 1-2, discloses in monitoring e-marketing campaign, one has to monitor the campaign parameters such as normal day-to-day traffic flow such as the rate (amount of traffic /hr) of sending of promotional content (outbound transmission flow rate) as well as the receipt of customer inquiries (inbound) responsive to the e-marketing campaign to avoid exceeding the available bandwidth of the network over which the campaign is conducted. It would have been obvious to one of ordinary skill to modify the teachings of D'EON et al by changing the e-marketing campaign monitoring parameter using outbound transmission flow rate as taught by AAPA as mere using other well known e-marketing campaign parameter to more efficiently allocate Internet resources. For example, in view of the teachings of Fig. 6 of D'EON et al, it would have been obvious to reduce the outbound transmission flow rate of ads or promotional content to AD #2 or increase the outbound transmission flow rate of ads or promotional content to AD #1 as taught by AAPA.

**RAKOSHITZ et al** is cited to teach management or monitoring traffic flow on the Internet by monitoring, modifying or controlling the inbound and outbound information flow rate based upon application, source address, destination address, URL, time of day, day of week, day of month, other variations using traffic management tool 208 of Fig. 1 {see col. 10, lines 12-35}. Traffic management tool 208 also controls activities ranging from bandwidth/latency control to capacity planning {see lines 20-22}. It would have been obvious to modify the teachings of monitoring traffic flow of D'EON et al by modifying or controlling one parameter of traffic flow which is the outbound information flow rate based upon a specific application (i.e. marketing campaign) as taught by

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RAKOSHITZ et al as mere using other parameter for monitoring traffic flow as taught by RAKOSHITZ et al.

The teachings of D'EON et al /AAPA or RAKOSHITZ et al fails to teach new amended steps (d)-(e) above.

In a system and method for monitoring consumer's activities and directing/redirecting at least a portion of electronic content (market segments/ads) to the most appropriate delivery channel, **SCHLACK** fairly teaches the concept of monitoring the consumer's activities (or request or responses) associated with each of the plurality of delivery channels used to transmit the electronic content and. based upon the received consumer responses analyzed, determining which of the plurality of delivery channels is more effective than each of the other of said plurality of delivery channels and selectively redirecting at least a portion of the electronic content from other of said plurality of delivery channels to the delivery channel determined to be more effective or best suitable or appropriate to the consumer {see col. 6, lines 41-67, col. 7, lines 1-35, col. 8, lines 10-52, col. 11, lines 20-57, col. 10, lines 49-59, col. col. 12, lines 10-67, Figs. 1, 2, 7, 8 and 9}. It would have been obvious to modify the teachings of D'EON et al /AAPA or RAKOSHITZ et al by including steps (d) and (e) as taught by SCHLACK to present the most suitable electronic content to the consumer, thus being more effective. Note, that the essential issue is present the most suitable electronic content to the consumer and how this is carried out, by selecting the appropriate channel among the many channels or by selecting the appropriate content among the many contents is within the knowledge of the skill artisan. Alternatively, in view of the teaching of

“selecting the appropriate e-content to present to the customer”, it would have been obvious to select the appropriate delivery channel to present the appropriate e-content to the consumer to be effective.

As for dep. claim 2 (part of 1 above), which deals with the type of electronic content or information, i.e. marketing campaign such as advertising, this is non-essential to the scope of the claimed invention and is taught in D'EON et al Fig. 1 or AAPA or SCHLACK col. 2, lines 60-67, col. 9, lines 5-50.

As for dep. claims 3-4 (part of 1 above), which deals with determining available network capacity parameters, i.e. bandwidth, these are taught in D'EON et al /AAPA as cited on pages 1-2 of AAPA or D'EON et al /RAKOSHITZ et al as shown on RAKOSHITZ et al col. 10, lines 20-60, col. 11, lines 1-45.

As for dep. claims 5, 10 (part of 1 above), which deal with marketing campaign parameters, i.e. determining a number of received consumer responses, this is taught in D'EON et al Figs. 3-6.

As for dep. claims 7-8 (part of 1 above), which deal with electronic content transmitting parameters and controlling the flow rate parameters, i.e. decreasing or increasing the flow rate, etc., these are fairly taught in D'EON et al as mentioned in the rejections of claim 1 above and/or by RAKOSHITZ et al col. 10, lines 20-35.

**As for independent program product claim 14**, which the respective computer program product to carry out the independent method of claim 1 above, it's rejected

over the computer program product of D'EON et al /AAPA/SCHLACK or D'EON et al / RAKOSHITZ et al/SCHLACK as indicated in D'EON et al col. 3, lines 17-35 and further in view of AAPA or RAKOSHITZ et al.

As for dep. claims 15-23 (part of 14 above), which have similar limitations as in dep. claims 2-5, 7-8, and 10 respectively above, they are rejected for the same reasons set forth in the rejections of dep. claims 2-5, 7-8, and 10 above.

**As for independent system claim 11**, which the respective system to carry out the method of claim 1 above, it's rejected over the system of D'EON et al /AAPA /SCHLACK or D'EON et al /RAKOSHITZ et al/SCHLACK as indicated in D'EON et al Fig. 1, 2, and further in view of RAKOSHITZ et al Figs. 1-2.

As for dep. claims 12-13 (part of 11 above), which have similar limitations as in dep. claims 7, 3 respectively above, they are rejected for the same reasons set forth in the rejections of dep. claims 7, 3, above.

**7. Claims 1-5, 7-8, 10 (method), 11-13 (system<sup>1</sup>), 14-18, 20-21 and 23 (product) are rejected (2<sup>nd</sup> time) under 35 U.S.C. 103(a) as being unpatentable over (1) ORACLE iMARKETING in view of (2) RAKOSHITZ et al and (3) SCHLACK.**

**As for independent method claim 1**, ORACLE iMARKETING discloses a method of eliciting response in an electronic (Internet) marketing campaign (advertising) comprising the steps of:

(b) transmitting the electronic content {see page 2, "*web page .... banner advertisement*" } over the network according to a predetermined campaign;

(c.) concurrently determining the effectiveness of the campaign by identifying consumer responses to the transmitted electronic content (information) {see page 2, 3<sup>rd</sup> paragraph "*ROI measurement and ... effectiveness is critical*"; and

(d) dynamically modifying the campaign according to (1) the determined effectiveness of the campaign (or (c.) page 2, 3<sup>rd</sup> paragraph, page 3, 3<sup>rd</sup> paragraph, page 4, 3<sup>rd</sup> paragraph, page 5, last two paragraphs.

**ORACLE iMARKETING** fairly teaches the claimed invention except for step (a), (d), (e) and (f) with modifying the outbound transmission flow rate for the electronic campaign

**RAKOSHITZ et al** is cited to teach a method and apparatus for conducting a specific application comprising the steps of:

(a) identifying the available network capacity for carrying out the specific application,

(d) determining real-time analysis of results to enable quick relocation of resources to successful campaigns such as controlling and deploying modifying/changing the outbound transmission flow rate for the specific application to match network growth or changing needs in a growing office {see Figs. 1-2, col. 10, lines 12-36}.

It would have been obvious to modify the teachings of ORACLE iMARKETING by carrying out steps (a) and (d) as taught by RAKOSHITZ et al to provide optimal recommendations of network configurations application to match network growth or changing needs in a growing office {see Figs. 1-2, col. 10, lines 12-36}.

The teachings of SCHLACK is cited above. It would have been obvious to modify the teachings of ORACLE iMARKETING /RAKOSHITZ et al by including steps (d) and (e) as taught by SCHLACK to present the most suitable electronic content to the consumer, thus being more effective. Note, that the essential issue is present the most suitable electronic content to the consumer and how this is carried out, by selecting the appropriate channel among the many channels or by selecting the appropriate content among the many contents is within the knowledge of the skill artisan. Alternatively, in view of the teaching of "selecting the appropriate e-content to present to the customer", it would have been obvious to select the appropriate delivery channel to present the appropriate e-content to the consumer to be effective.

As for dep. claims 2-5, 7-8 and 10 (part of 1 above), they are rejected for the same reasons set forth above in view of the teachings by RAKOSHITZ et al.

**As for independent program product claim 14**, which the respective computer program product to carry out the method of claim 1 above, it's rejected over the computer program product of ORACLE iMARKETING /RAKOSHITZ et al/SCHLACK.

As for dep. claims 15-23 (part of 14 above), which have similar limitations as in dep. claims 2-5, 7-8 and 10 respectively above, they are rejected for the same reasons set forth in the rejections of dep. claims 2-5, 7-8 and 10 above.

**As for independent system claim 11**, which the respective system to carry out the method of claim 1 above, it's rejected over the system of ORACLE iMARKETING /

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RAKOSHITZ et al/SCHLACK as indicated in ORACLE iMARKETING page 1 or

RAKOSHITZ et al Figs. 1-2.

As for dep. claims 12-13 (part of 11 above), which have similar limitations as in dep. claims 7, 3 respectively above, they are rejected for the same reasons set forth in the rejections of dep. claims 7 and 3 above.

No claims are allowed.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct@uspto.gov>. Should you have any questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

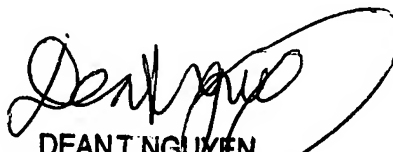
In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (571) 272-3600, or e-mail [CustomerService3600@uspto.gov](mailto:CustomerService3600@uspto.gov).

Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (571) 272-6806. My work schedule is normally Monday through Friday from 6:30 am - 4:00 pm. I am scheduled to be off every other Friday.

Should I be unavailable during my normal working hours, my supervisor John Weiss can be reached at (571) 272-6812.

The main FAX phone numbers for formal communications concerning this application are (571) 273-8300. My personal Fax is (571) 273-6806. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

dtn  
September 27, 2007

  
DEAN T. NGUYEN  
PRIMARY EXAMINER